

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 35220

|                       |   |                                  |
|-----------------------|---|----------------------------------|
| STATE OF IDAHO,       | ) | 2009 Unpublished Opinion No. 402 |
|                       | ) |                                  |
| Plaintiff-Respondent, | ) | Filed: March 31, 2009            |
|                       | ) |                                  |
| v.                    | ) | Stephen W. Kenyon, Clerk         |
|                       | ) |                                  |
| RICKY A. ERICKSON,    | ) | THIS IS AN UNPUBLISHED           |
|                       | ) | OPINION AND SHALL NOT            |
| Defendant-Appellant.  | ) | BE CITED AS AUTHORITY            |
|                       | ) |                                  |

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Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Cheri C. Copsey, District Judge. Hon. Ronald M. Hart, Magistrate.

Order of the district court, on intermediate appeal from the magistrate, affirming judgment of conviction for failure to obey a traffic-control device, affirmed.

Ricky A. Erickson, Boise, pro se appellant.

Hon. Lawrence G. Wasden, Attorney General; Nicole L. Schafer, Deputy Attorney General, Boise, for respondent.

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PERRY, Judge

Ricky A. Erickson appeals from the district court's order, on intermediate appeal, affirming his judgment of conviction for failure to obey a traffic-control device. For the reasons set forth below, we affirm.

Erickson was cited for failure to obey a traffic-control device after a police officer witnessed him enter the intersection after the light turned red. I.C. § 49-801. At trial, the magistrate found Erickson guilty based on testimony from the police officer that he clearly observed Erickson cross the stop line after the light turned red. Erickson appealed to the district court alleging numerous errors by the magistrate. The district court affirmed Erickson's judgment of conviction, holding that he was not entitled to a jury trial, there was substantial evidence to support the magistrate's findings, allegations of discovery violations were being raised for the first time on appeal and not properly before the district court, and Erickson was properly cross-examined. Erickson again appeals.

On review of a decision of the district court, rendered in its appellate capacity, we review the decision of the district court directly. *State v. DeWitt*, 145 Idaho 709, 711, 184 P.3d 215, 217 (Ct. App. 2008). We examine the magistrate record to determine whether there is substantial and competent evidence to support the magistrate's findings of fact and whether the magistrate's conclusions of law follow from those findings. *Id.* If those findings are so supported and the conclusions follow therefrom and if the district court affirmed the magistrate's decision, we affirm the district court's decision as a matter of procedure. *Id.*

At the conclusion of Erickson's trial, the magistrate found that he had violated I.C. § 49-801, which section provides, in pertinent part:

(1) The driver of any vehicle shall obey the instructions of any traffic-control device placed or held in accordance with the provisions of this title, unless otherwise directed by a peace officer, subject to the exceptions granted the driver of an authorized emergency vehicle by this title.

....

(4) Any traffic-control device placed or held pursuant to the provisions of this title and purporting to conform to the lawful requirement pertaining to those devices shall be presumed to comply with the requirements of this title, unless the contrary shall be established by competent evidence.

At the trial, the police officer testified that he was following behind Erickson's vehicle approaching the intersection when the light turned yellow. At the time that the light turned red, the officer testified that he observed Erickson unlawfully cross the stop line and proceed through the intersection. Therefore, there is substantial and competent evidence in the record supporting the magistrate's factual finding that a violation occurred. Erickson violated I.C. § 49-801 when he failed to obey the traffic light by entering the intersection after the light had turned red.

Erickson challenges the credibility of the police officer on numerous grounds. However, this Court will not substitute its view for that of the trier of fact as to the credibility of the witnesses, the weight to be given to the testimony, and the reasonable inferences to be drawn from the evidence. *State v. Flowers*, 131 Idaho 205, 207, 953 P.2d 645, 647 (Ct. App. 1998). The magistrate found credible the police officer's testimony that he witnessed Erickson's unlawful conduct. We will not second guess that determination on appeal.

Most of Erickson's issues revolve around the proper functioning of the traffic signal at the time he ran the red light. Additionally, he argues that the proper functioning of the traffic light was a critical element of the state's case, which it failed to prove. However, the proper

functioning of the traffic light is not an element of the offense of failure to obey a traffic-control device. A violation of I.C. § 49-801 occurs the moment a driver runs a red light. *See State v. Schmidt*, 121 Idaho 381, 383, 825 P.2d 104, 106 (Ct. App. 1992). In accordance with the statute, the proper placement, maintenance, or functioning of the traffic light can serve as an affirmative defense if established by competent evidence. Erickson provided no such evidence other than his argument that the police officer testified that Erickson was approximately 50 feet from the intersection when the light turned yellow and that therefore, according to Erickson's own mathematical calculations, the light stayed yellow for an insufficient period of time as required by the Manual on Uniform Traffic Control Devices. Erickson's calculations based on the police officer's approximations of distance are not sufficient evidence to overcome the presumption of proper functioning. Therefore, the magistrate did not err by failing to give greater consideration to the proper functioning or maintenance of the light at the time that Erickson drove through it.

Erickson next raises several issues alleging discovery violations by the state and error by the magistrate for failing to force discovery of any and all materials connected to the maintenance, calibration, timing, and test procedures and results for the traffic light. The district court did not consider these issues because they were not properly raised before the magistrate. Generally, issues not raised below may not be considered for the first time on appeal. *State v. Fodge*, 121 Idaho 192, 195, 824 P.2d 123, 126 (1992). Therefore, we do not further address these issues.

The next group of issues raised by Erickson concern his calling himself to testify during his defense and the magistrate thereafter allowing him to be cross-examined. Where a defendant voluntarily testifies on his or her own behalf, the defendant waives the constitutional privilege against self-incrimination with respect to questions related to the subject matter of his or her testimony. *State v. Rauch*, 144 Idaho 682, 685, 168 P.3d 1029, 1032 (Ct. App. 2007). Erickson contends that the magistrate compelled him to testify against himself. This allegation is belied by the record. Erickson called himself to the witness stand, twice, as part of his defense. He was then properly subjected to cross-examination by the state. During cross-examination, Erickson refused to answer questions, at which point the magistrate admonished him to answer counsel's questions. The following exchange then took place:

[PROSECUTOR]: So I am going to ask you this next question which requires a yes or no. No other words but yes or no. Is it your defense today that

because your truck was loaded too heavy you were unable to stop before the light turned red?

[ERICKSON]: That is a factor.

[PROSECUTOR]: Judge, I would ask you to admonish the witness.

[COURT]: Yeah. Answer yes or no. You can explain it later.

You know, I will give you a chance to respond to her questions and then you can explain yourself. But it does call for a yes or no answer.

[ERICKSON]: That enters into the situation that night.

[PROSECUTOR]: Judge, I would, again, ask you to admonish the--

[COURT]: Is it yes or no?

[ERICKSON]: Is it a defense or--

[PROSECUTOR]: Is it your defense in this case that your truck was too heavy to stop in time before the light turned red?

[ERICKSON]: It's--it's one of several defenses.

[PROSECUTOR]: Is that a yes?

[ERICKSON]: Is it--

[COURT]: It sounds to me like that's yes.

[ERICKSON]: It's one of several.

[COURT]: He says, yes, it's one of several defenses.

After cross-examination, the magistrate then gave Erickson an opportunity to respond to this line of questioning. The only questions asked by the magistrate while Erickson was on the stand concerned whether Erickson had anything else that he wanted to say. After reviewing the record in this case, we conclude that the cross-examination of Erickson was proper and the subject matter of cross-examination was relevant to subjects introduced by Erickson during direct examination. Erickson alleges that the magistrate used his statements to fabricate that he acknowledged crossing the stop line after the light turned red. We can find no instances of this in the record, and Erickson has failed to specifically cite any. This issue merits no further discussion, and we will not scour the record searching for error on Erickson's behalf.

Erickson argues that the state failed to claim or otherwise demonstrate that he intended to run the red light. Erickson also argues that the magistrate failed to notify him of his constitutional rights. These issues are not properly before this Court. Erickson raised the broad issue before the district court that the state had altogether failed to prove its case. Where a party appeals the decision of an intermediate appellate court, the appellant may not raise issues that are different from those presented to the intermediate court. *State v. Sheahan*, 139 Idaho 267, 275, 77 P.3d 956, 964 (2003). Accordingly, we will not address these issues further.

Erickson makes many other arguments throughout his brief, including but not limited to, that he is not capable of committing the alleged infraction. We have reviewed Erickson's briefs and the record in this case and conclude that all other arguments raised by Erickson are meritless, unfounded, or unsupported by adequate argument or authority. A party waives an issue on appeal if either authority or argument is lacking. *State v. Zichko*, 129 Idaho 259, 263, 923 P.2d 966, 970 (1996). Therefore, we need not address them further.

The magistrate's factual findings were supported by substantial and competent evidence in the record. Erickson raises no errors meriting reversal. The district court affirmed the magistrate's decision. Accordingly, the district court's order, on intermediate appeal, affirming Erickson's judgment of conviction for failure to obey a traffic-control device is affirmed.

Chief Judge LANSING and Judge GRATTON, **CONCUR.**